IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1127 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DISTRICT PANCHAYAT

Versus

PREMJIBHAI LAXMANBHAI PARMAR

Appearance:

1. Civil Revision Application No. 1127 of 2000

MR PV HATHI for Petitioner No. 1

MR KG SUKHWANI for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 09/04/2002

ORAL JUDGEMENT

Rule. Mr. Sukhwani, learned advocate for the respondents waives service of Rule on behalf of the respondents. Rule is fixed forthwith. Heard Mr. Hathi, learned advocate for the petitioner - original defendant and Mr. Sukhwani, learned advocate for the respondent

original plaintiff. As found from the order under challenge, the petitioner defendant has filed application Ex. 18 before the learned Trial Judge in a suit filed by the respondent plaintiff being Regular Civil Suit No. 107 of 1999, wherein, the plaintiff had prayed for disposal of the suit under Order 7 of the Civil Procedure Code and request was made that the dispute in the suit be referred to the arbitrator. An application Ex. 21 was also filed by the petitioner defendant in the said suit, wherein, the request was made that the suit filed by the respondent plaintiff in view of the provisions u/s. 8 of the Arbitration and Conciliation Act 1996, the suit filed by the respondent plaintiff be referred to arbitrator. The learned trial Judge after hearing above two applications has as per order dated 18.8.2000 has disposed of both the applications by observing that order will be passed on applications Ex. 18 and 21 after hearing the application Ex.5 filed by the respondent plaintiff.

3. As found from the ordersheet, while issuing notice to the respondents stay of further proceedings of the suit has been granted in favour of the petitioner defendant. On considering the submissions and order under challenge, where the learned trial Judge has disposed of applications Exs.18 and 21, which according to the defendant the dispute is required to be referred to in view of the provisions of 8 (1) of the Act to the Arbitrator. It is true that by filing suit before the learned Judge, the plaintiff has filed application Ex.5 for seeking interim relief till the pendency of the suit. Learned trial Judge though has heard the applications Ex.18 and 21, it is observed in the order that orders will be passed after hearing Ex. 5 filed by the plaintiff.

4. Considering the submissions made before me and order under challenge, this court is of the view that as the application below Ex. 18 and 21 are regarding the disputes between the parties be referred to the Arbitrator and the learned trial Judge has heard both the applications and therefore, it is the duty of the learned trial Judge to decide the said applications first. Accordingly, order passed below Application Exs. 18 and 21 are quashed and set aside and the learned trial Judge is directed to decide the application Exs. 18 and 21 as expeditiously as possible. With these observations, present Civil Revision Application is allowed. Rule is made absolute with no order as to costs.

(D.K.Trivedi,J.)

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